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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:	Application of MARK J. PERINA	
Serial No.:	10/797,778	BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES
Filed:	March 10, 2004	
Title:	HOLLOW STRUCTURAL MEMBER	Appeal No. _____
Art Unit.:	3635	

APPELLANT'S APPEAL BRIEF

Commissioner for Patents
Alexandria, VA 22313

Dear Sir:

REAL PARTY IN INTEREST

The Appellant has assigned all of his rights to the invention to Valmont Industries, Inc.; therefore, the real party in interest is Valmont Industries, Inc.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences related to this case.

STATUS OF THE CLAIMS

This is an appeal of the Examiner's final rejection of Claims 30-31. Claims 30 and 31 are independent claims.

STATUS OF AMENDMENTS

The Examiner entered a final rejection of Claims 30 and 31 on January 28, 2008. Applicant filed Amendment After Final Rejection but the Examiner did not enter the Amendment.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 is directed to a hollow, elongated, structural member wherein a plurality of elongated hollow pole sections are secured together in an end-to-end relationship. Each of the hollow pole sections comprise a plurality of longitudinally extending peripheral sections joined together. Each of the peripheral sections have upper and lower edges and first and second side edges. Each of the peripheral sections have first and second vertically extending break lines formed therein adjacent the first and second side edges respectively to form longitudinally inwardly extending first and second side edge portions. Each of the peripheral sections also have a plurality of spaced-apart longitudinally extending break lines formed therein between the first and second break lines to form a plurality of angled wall sections between the first and second break lines. Each of the edge portions of the peripheral sections are bolted together by bolt members to form a hollow pole section. The angled wall sections immediately adjacent the first and second break lines of the adjacent peripheral sections define an externally presented general V-shape therebetween.

Independent Claim 31 is identical to Claim 30 except that the claim is directed to a wind turbine tower rather than a hollow, elongated structural

member. All of the limitations enumerated above with respect to Claim 30 are found in Claim 31. Neither Claims 30 nor 31 include any means-plus-functions pursuant to 35 U.S.C. 112(6).

GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

Claims 30-31 were rejected under 35 U.S.C. 102(b) as being anticipated by Schulz (2002987).

It is the Examiner's position that Schulz discloses a wind turbine tower which is comprised of a plurality of elongated hollow pole sections (29, 30) secured together in an end-to-end relationship. The Examiner also contends that each of the hollow pole sections of Schulz comprise a plurality of longitudinally extending peripheral sections joined together. Additionally, the Examiner contends that each of the peripheral sections of Schulz have upper and lower edges and first and second side edges. The Examiner further contends that each of the peripheral sections of Schulz have first and second vertically extending break lines (VBL) formed therein adjacent the first and second side edges respectively to form longitudinally inwardly extending first and second edge portions (EP). Further, the Examiner contends that each of the peripheral sections of Schulz also have a plurality of spaced-apart longitudinally extending break lines (LBL) formed therein between the first and second break lines to form a plurality of angled wall sections between the first and second break lines. Additionally, the Examiner contends that the edge portions of the peripheral sections of Schulz are bolted together by bolt members to form a hollow pole

section and that the angled wall sections immediately adjacent the first and second break lines of the adjacent peripheral sections define an externally presented general V-shape therebetween.

ARGUMENT

(A) Whether Claims 30-31 are patentable under 35 U.S.C. 102(b) over Schulz (2002987).

As this is Board is well aware, in order for a prior art patent to anticipate a claim, each and every element of the claimed invention be disclosed in a single prior art reference or embodied in a single prior art reference. *In re Paulsen,* 30 F3rd 1475, 31 USPQ 2nd 1671, 1673 (Fed. Cir. 1994). This Board is also aware that the elements disclosed in the prior art reference must be either inherent or disclosed expressly and must be arranged as in the claim. *Richardson v. Suzuki Motor Co.,* 868 F2d 1226, 9 USPQ 2nd 1913 (Fed. Cir. 1989). The corollary of the rule that absence from the reference of any claimed element negates anticipation. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F2d 1565, 230 USPQ 81 (Fed. Cir. 1986).

With respect to the Examiner's final rejection, Appellant can agree that Schulz does disclose a vertically extending break line (VBL) which is formed adjacent each of the first and second side edges respectively to form longitudinally inwardly extending first and second side edge portions (EP). However, the Examiner in the final rejection did not point out how Schulz can anticipate the limitation that each of the peripheral sections also have a plurality

of spaced-apart longitudinally extending break lines formed therein between the first and second break lines to form a plurality of angled wall sections between the first and second break lines. Fig. 18 of Schulz clearly shows that there are no longitudinally extending break lines (LBL) formed between the break lines at the side edges of the peripheral section. Accordingly, Schulz cannot anticipate Claims 30 and 31.

Additionally, Claim 31 includes the limitation that the invention is a wind turbine tower and there is no teaching whatsoever in Schulz that the structure disclosed therein could be a wind turbine tower. Inasmuch as the preamble in Claim 31 breaths life into the remainder of the claim, the preamble "a wind turbine tower" is a limitation which is not taught by Schulz.

Accordingly, Schulz cannot possibly anticipate Claims 30 and 31 under 35 U.S.C. 102(b). Therefore, the Examiner's final rejection of Claims 30 and 31 should be reversed.

CONCLUSION

The foregoing has clearly shown that Claims 30 and 31 are not anticipated by Schulz under 35 U.S.C. 102(b). Schulz does not teach each and every limitation found in Claims 30 and 31. The Board is therefore respectfully requested to reverse the Examiner's final rejection.

Respectfully submitted,

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Date: June 5, 2008

CLAIMS APPENDIX

30. A hollow, elongated, structural member comprising:

a plurality of elongated hollow pole sections secured together in an end-to-end relationship;

each of said hollow pole sections comprising a plurality of longitudinally extending peripheral sections joined together;

each of said peripheral sections having upper and lower end edges and first and second side edges;

each of said peripheral sections having first and second vertically extending break lines formed therein adjacent said first and second side edges respectively to form longitudinally inwardly extending first and second edge portions;

each of said peripheral sections also having a plurality of spaced-apart longitudinally extending break lines formed therein between said first and second break lines to form a plurality of angled wall sections between said first and second break lines;

said edge portions of said peripheral sections being bolted together by bolt members to form a hollow pole section;

the angled wall sections immediately adjacent said first and second break lines of said adjacent peripheral sections defining an externally presented general V-shape therebetween.

31. A wind turbine tower, comprising:

a plurality of elongated hollow pole sections secured together in an end-to-end relationship;

each of said hollow pole sections comprising a plurality of longitudinally extending peripheral sections joined together;

each of said peripheral sections having upper and lower end edges and first and second side edges;

each of said peripheral sections having first and second vertically extending break lines formed therein adjacent said first and second side edges respectively to form longitudinally inwardly extending first and second edge portions;

each of said peripheral sections also having a plurality of spaced-apart longitudinally extending break lines formed therein between said first and second break lines to form a plurality of angled wall sections between said first and second break lines;

said edge portions of said peripheral sections being bolted together by bolt members to form a hollow pole section;

the angled wall sections immediately adjacent said first and second break lines of said adjacent peripheral sections defining an externally presented general V-shape therebetween.

EVIDENCE APPENDIX

N/A

RELATED PROCEEDINGS INDEX

NONE

CERTIFICATE OF MAILING

I hereby certify that the original of APPELLANT'S APPEAL BRIEF for MARK J. PERINA, Serial No. 10/797,778, was mailed by first class mail, postage prepaid, to the Mail Stop Appeal Briefs-Patent, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on this 5th day of ~~May~~ June OCT, 2008.

Thomte Patent Law Office, L.L.C.

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